

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JAMES M. CUNNINGHAM**

Claimant

VS.

**CITY OF HUTCHINSON**

Self-Insured Respondent

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Docket No. 1,011,147

**ORDER**

Claimant appealed the September 26, 2005, Award entered by Administrative Law Judge Bruce E. Moore. The Board heard oral argument on January 10, 2006.

**APPEARANCES**

Mitchell Rice of Hutchinson, Kansas, appeared for claimant. Scott J. Mann of Hutchinson, Kansas, appeared for respondent.

**RECORD AND STIPULATIONS**

The record considered by the Board and the parties' stipulations are listed in the Award.

**ISSUES**

Claimant was injured on April 22, 2003, when he was partially buried in a trench. In the September 26, 2005, Award, Judge Moore awarded claimant permanent disability benefits for a 20 percent functional impairment to the right leg.

Claimant contends Judge Moore erred. Claimant argues he developed an altered gait due to his right leg injury and, consequently, developed injury to his low back. Accordingly, claimant requests the Board to modify the Award to grant him a 55.34 percent permanent disability under K.S.A. 44-510e based upon an 83 percent task loss and a 27.68 percent wage loss.

Conversely, respondent contends the Award should be affirmed.

The only issue before the Board on this appeal is the nature and extent of injury and disability.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes the September 26, 2005, Award should be approved. The 10-page Award makes detailed findings and conclusions, which the Board adopts as its own. In summary, the Board is not convinced that it is more probably true than not that claimant injured or aggravated his back due to the April 2003 accident or the resulting altered gait.

Claimant is entitled to receive permanent disability benefits under the schedule of K.S.A. 44-510d for a 20 percent disability to his right leg. Accordingly, the Award should be affirmed.

**AWARD**

**WHEREFORE**, the Board affirms the September 26, 2005, Award entered by Judge Moore.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January, 2006.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Mitchell Rice, Attorney for Claimant  
Scott J. Mann, Attorney for Respondent  
Bruce E. Moore, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director